

REMARKS

The above amendments and these remarks are responsive to the final Office action dated January 11, 2006, and support the accompanying Request for Continued Examination as a submission under 37 C.F.R. § 1.114(c). Claims 1, 3, 4, 9-14, and 31-33 are pending in the application. In the Office action, the Examiner rejected each of the claims as being obvious under 35 U.S.C. § 103(a) over a combination of references. In particular, the Examiner rejected:

- Claims 1, 3, 4, 12-14, and 31-33 over U.S. Patent No. 6,592,578 to Henniges et al. ("Henniges") in view of U.S. Patent No. 5,720,502 to Cain ("Cain");
- Claims 9 and 10 over Henniges in view of U.S. Patent No. 4,565,193 to Streli ("Streli"); and
- Claim 11 over Henniges in view of U.S. Patent No. 6,623,486 to Weaver et al. ("Weaver").

Applicants traverse the rejections, contending that rejected claims 1, 3, 4, 9-14, and 31-33 are not obvious. Furthermore, applicants have presented arguments showing that claims 1, 3, 4, 9-14, and 31-33 are neither taught nor suggested by any of the cited references, either alone or in combination. Accordingly, applicants respectfully request reconsideration of the rejected claims, and prompt issuance of a Notice of Allowability covering all of the pending claims.

I. Request for Continued Examination

Applicants are submitting herewith a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This Request complies with the requirements of 37 C.F.R. § 1.114. In particular:

- (i) Prosecution in the application is closed, since the last Office action was a final Office action under 37 C.F.R. § 1.113.

- (ii) The Request is accompanied by a submission as set forth at 37 C.F.R. § 1.114(c), specifically, the amendments and remarks set forth herein.
- (iii) The Request is accompanied by the fee set forth at 37 C.F.R. § 1.17(e).

Accordingly, applicants respectfully request grant of their Request for Continued Examination.

II. Claim Rejections – 35 U.S.C. § 103

II.A. Claims 1, 3, 4, 12-14, and 31-33

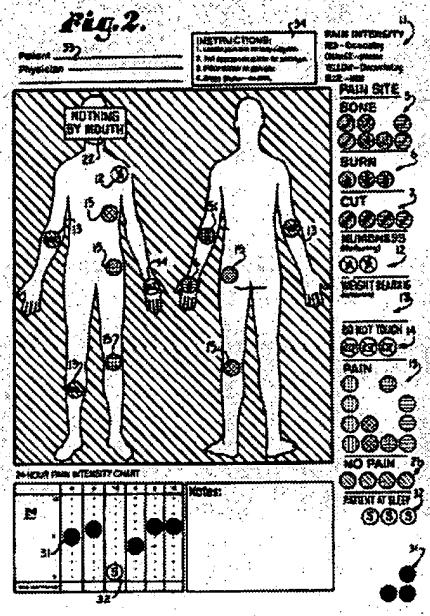
The Examiner rejected each of claims 1, 3, 4, 12-14, and 31-33 as being obvious over Henniges in view of Cain. Applicants traverse the rejection because neither reference, either alone or in combination, teaches or suggests at least two bone plates with each bone plate including “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured,” as recited by claim 1.

Henniges does not teach or suggest at least two bone plates with each bone plate including “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured.” In the Office action, the Examiner agrees with applicants’ position: “Henniges et al teach the claimed invention except for the distinct color indicating a left or a right half of the skeleton.”¹

Cain relates to method and apparatus for communicating pain location and intensity. In particular, Cain discloses pain intensity charts, such as the chart of Figure 2, reproduced below. The charts can include patient views, such as front and back silhouettes of a body in Figure 2, or left and right side views (see Figure 4). Stickers can

¹ Office action dated January 11, 2006, page 3, lines 3-4.

be placed on the areas of the chart to indicate, for example, areas of pain. The intensity of the pain is indicated by a color code.



In the Office action, the Examiner characterized Cain as teaching

a method for distinguishing the left half of the skeleton from the right half of the skeleton, in this case related to pain. This teaching shows that it [is] known in the art to use color-coding methods to differentiate between the left and right half of the skeleton for various reasons.²

Applicants strongly disagree with this characterization. Cain does not teach or suggest colors to differentiate halves of a skeleton. Instead, Cain discloses colors to indicate pain intensity. In Cain, left and right halves of a skeleton are differentiated not by color, but by position within a silhouette. Accordingly, Cain does not teach or suggest any correspondence between color and position and particularly not a distinct color that indicates the left half or the right half, as recited by claim 1.

Applicants believe that a more in-depth analysis of Cain's Figure 2 (shown above) may help to clarify applicants' arguments. Figure 2 illustrates a plurality of

² *Id.*, page 3, lines 4-7.

stickers (circles) that can be placed on a chart corresponding to a patient's body. The stickers may include icons/patterns that indicate a physical condition (or lack thereof). For example, stickers with distinct icons or patterns are disclosed to indicate bone pain, a burn, a cut, numbness, or an area that should not be touched.

With regard to pain, the stickers are color-coded for pain, with distinct colors for different pain levels. In particular, red indicates excruciating pain, orange indicates intense pain, yellow indicates discomforting pain, blue indicates mild pain, and green indicates no pain. Accordingly, color does not correspond in any way to left or right. For example, the chart of Figure 2 shows a yellow sticker disposed on the front, left knee of the silhouette. This particular sticker thus indicates discomforting pain at this site in a patient. However, the yellow color here is not providing information about left versus right. Instead, the silhouette itself provides this information according to how it is drawn. To underscore this point, the same yellow sticker can be transferred to the right knee, to the centerline, or any other part of either silhouette, and the color yellow again would not indicate left, right, or centerline (or any particular position therein) but still would indicate only discomforting pain. Cain does not disclose any other type of color-coding. Therefore, Cain does not disclose color-coding methods to differentiate between the left and right half of the skeleton, as asserted by the Examiner.

In summary, none of the cited references, either alone or in combination, teaches or suggests every element of claim 1. Claim 1 thus should be allowed. Claims 3, 4, 12-14, and 31-33, which depend from claim 1, also should be allowed for at least the same reasons as claim 1.

II.B. Claims 9 and 10

The Examiner rejected claims 9 and 10 as being obvious over Henniges in view of Streli. Applicants traverse the rejection because neither reference teaches or suggests “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured,” as recited by claim 1.

Henniges does not teach or suggest at least two bone plates with each bone plate including “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured.” In the Office action, the Examiner agreed with this assertion, as described above in relation to claim 1.

Streli also does not teach or suggest at least two bone plates with each bone plate including “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured.” In particular, Streli relates to pronged bone plates and includes no disclosure related to any use of color.

In summary, none of the cited references, either alone or in combination, teaches or suggests every element of claims 9 and 10. Moreover, claims 9 and 10 depend from and further limit claim 1, which applicants believe is allowable (see Section II.A). Claims 9 and 10 thus should be allowed.

II.C. Claim 11

The Examiner rejected claim 11 as being obvious over Henniges in view of Weaver. Applicants traverse the rejection because neither reference teaches or suggests “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured,” as recited by claim 1.

Henniges does not teach or suggest at least two bone plates with each bone plate including “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured.” In the Office action, the Examiner agreed with this assertion, as described above in relation to claim 1.

Weaver also does not teach or suggest at least two bone plates with each bone plate including “a distinct color that indicates the left half or the right half to which the bone plate is configured to be secured.” In particular, Weaver relates to a bone plating system with locking and non-locking holes and screws and includes no disclosure related to any use of color.

In summary, none of the cited references, either alone or in combination, teaches or suggests every element of claim 11. Moreover, claim 11 depends from and further limits claim 1, which applicants believe is allowable (see Section II.A). Claim 11 thus should be allowed.

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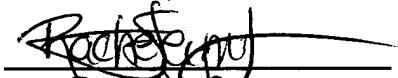
III. Conclusion

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact Stan Hollenberg (Reg. No. 47,658) or the undersigned attorney of record, both at 503-224-6655.

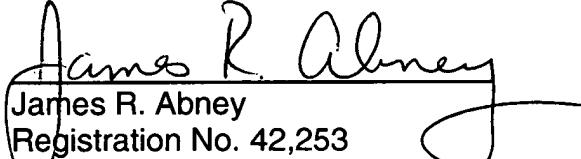
Respectfully submitted,

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on March 7, 2006.


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